

R. Keramati, SBN# 182425
Western Legal Group, APC.
110 West C. Street, Suite 1300
San Diego, California 92101
Telephone (619) 231-2529
Facsimile (619) 231-2528

Attorney for: ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-BAEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE PETER C. LEWIS)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Katherine Frances STOVER

Defendant(s)

Criminal Case No. **08cr1913-L (PCL)**

NOTICE OF MOTION AND MOTION FOR
THE TAKING OF THE VIDEO
DEPOSITIONS OF MATERIAL
WITNESSES ANTONIO SOLIS-
MARTINEZ AND EFRAIN RAMOS-BAEZ

DATE: July 2, 2008

TIME: 10:30 a.m.

JUDGE: Honorable Peter C. Lewis

TO: GERARD WASSON, ESQ., Attorney for Defendant Katherine Frances Stover

TO: REBECCA KANTER, AUSA, Attorney for the Prosecution.

PLEASE TAKE NOTICE that on July 2, 2008 at 10:30 a.m., or as soon thereafter as
counsel may be heard, in the Courtroom of the Honorable Peter C. Lewis, the material witnesses,
ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-BAEZ, by and through their counsel,
RAY KERAMATI, will bring the above entitled motion.

MOTION

The material witnesses, ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-
BAEZ, by and through their counsel, RAY KERAMATI, and pursuant to Rule 15(a) of the

1 Federal Rules of Criminal Procedure, and pursuant to 18 U.S.C. Section 3144, move for an order
2 to secure their testimony pending trial, and for an order for their release from custody
3 immediately thereafter.

4 This motion will be made on the grounds that the witnesses are unable to meet any
5 condition of release and that their testimony can be adequately be secured by deposition, and that
6 further detention is not necessary to prevent a failure of justice and would, in fact, perpetuate an
7 extreme hardship on the material witnesses and their family.

8 This motion will be made based upon the Declaration of Ray Keramati, Esq., the Points
9 and Authorities in Support of the Motion, and all documents and records on file herein and upon
10 such oral testimony as the Court may deem proper.

11 DATED: June 24, 2008

12 /s/ Ray Keramati
13 R. Keramati, Esq.
14 Attorney for Material Witnesses
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Attorney for: ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-BAEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE PETER C. LEWIS)

UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr1913-L (PCL)
Plaintiff,)	
vs.	)	MEMORANDUM OF POINTS AND
Katherine Frances STOVER	)	AUTHORITIES IN SUPPORT OF MOTION
Defendant(s)	)	FOR THE TAKING OF THE VIDEO
	)	DEPOSITIONS OF MATERIAL
	)	WITNESSES ANTONIO SOLIS-
	)	MARTINEZ AND EFRAIN RAMOS-BAEZ
)	
	)	DATE: July 2, 2008
	)	TIME: 10:30 a.m.
	)	JUDGE: Honorable Peter C. Lewis

I.
INTRODUCTION

The material witnesses, **ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-BAEZ** arrested on or about May 16, 2008, near Seeley, California, by officers of United States Border Patrol after they had illegally entered the United States.

They were later designated as material witnesses and were placed in custody by US Marshals and subsequently transported to El Centro where they remain in custody. They may remain so indefinitely as qualified sureties cannot be found.

These witnesses, by and through their appointed counsel, Ray Keramati, move this Court

1 for an Order under U.S.C. Section 3144 and Federal Rule of Criminal Procedure 15, as the
 2 witnesses have been unable to secure sureties under the conditions imposed by the government in
 3 this matter.

4 **II.**
 5 **UNDER EXISTING FEDERAL LAW**
 6 **THE COURT IS REQUIRED TO ORDER**
 7 **THE DEPOSITION AND RELEASE OF THIS WITNESS**

8 The language of 18 U.S.C. Section 3144 provides that material witnesses who are unable
 9 to comply with any condition of release have the right to have their depositions taken and
 10 thereafter be released:

11 *“No material witness may be detained because of inability to comply with a condition of*
 12 *release if the testimony of such witness can adequately be secured by deposition, and if further*
 13 *detention is not necessary to prevent a failure of justice...”*

14 Further, Federal Rule of Criminal Procedure 15(a) provides the procedure basis for this
 15 motion for deposition:

16 *“If a witness is detained pursuant to Section 3144 of Title 18, United States Code, the*
 17 *Court on written motion of the witness and upon notice to the parties may direct that the*
 18 *witness’s deposition be taken. After the deposition has been subscribed the Court may discharge*
 19 *the witness...”*

20 The language of 18 U.S.C. 3144 is mandatory and requires material witnesses’ deposition
 21 and release. Moreover, any ambiguity which exists in 18 U.S.C. Section 3144 must be construed
 22 in favor of material witnesses where they were incarcerated indefinitely without being charged
 23 with any criminal violation.

24 As part of In Re Class Action Application for Habeas Corpus on behalf of all Material
 25 Witnesses in the Western District of Texas, 612 Fed.Supp. 940, 945 (1985), the Court stated:

26 *As a final matter, this Court is of the opinion that 18 U.S.C. Section 3144 required that*
 27 *an individual incarcerated as a material witness be deposed if certain requirements are met.*
 28 *Without assistance of counsel, it is this Court’s belief that deposition of the material witnesses*
rarely go forward and that as a consequence, the incarceration of material witnesses is

1 *prolonged. This Court is of the opinion that extant procedures not only create the risk of*
 2 *erroneous deprivations of liberty, but also create the risk of unnecessarily prolonged*
 3 *deprivations of liberty...”*

4 The instant witness is entitled to due process of the law under the Fifth Amendment. *Id.*
 5 612 Fed. Supp. at 944. Also see United States v. Linton, 502 Fed. Supp. 878 (1980), which had
 6 a material witness’s deposition ordered and then ordered the release of the material witness
 7 despite failure of the witness to appear in response to subpoena in the underlying criminal action.

8 Further, legislative history supports the position that the deposition and release of the
 9 material witness is mandatory.

10 Section 3144: RELEASE OR DETENTION OF A MATERIAL WITNESS, reads (in
 11 part):

12 *“This Section carries forward, with two significant changes, current 18 U.S.C. 3149*
 13 *which concerns the release of a material witness. If a person’s testimony is that it may become*
 14 *impracticable to secure his presence by subpoena, the government is authorized to take such*
 15 *person into custody. A judicial officer is to treat such a person in accordance with Section 3142*
 16 *and to impose those conditions of release that he finds to be reasonably necessary to assure the*
 17 *presence of the witness as required, or if no conditions of release will assure the appearance of*
 18 *the witness, order his detention as provided in Section 3142. However, if a material witness*
 19 *cannot comply with release conditions or there are no release conditions that will assure his*
 20 *appearance, but he will give a deposition that will adequately preserve his testimony, the judicial*
 21 *officer is required to order the witness’s release after the taking of the deposition if this will not*
 22 *result in a failure of justice...1984 U.S. Code Cong. and Adm. News, p 3182.*

23 In the instant matter, counsel for the detained material witness believes there will be no
 24 failure of justice in requiring the deposition, and asserts that such contention is supported by case
 25 law. It is true that defendant has a Constitutional right to confront and cross-examine witnesses
 26 against them, but this right must be balanced against the Constitutional rights of the detained
 27 witness. In this matter, the defendant is represented by counsel, said counsel has not been denied
 28 the opportunity to interview the witness while the witness has been detained, and said counsel

1 and his client will be notified of the time and place of the deposition and are invited to ask all
2 questions of the witnesses which they believe will further their case.

3 III.

4 THE WITNESS AND HIS FAMILY ARE SUFFERING ECONOMIC 5 HARDSHIP AS A RESULT OF HIS CONTINUING INCARCERATION

6 Federal courts in this District have been applying Torres-Ruiz v. U.S. District Court For
7 The Southern District of California, 120 F.3d 933 (9th Cir. 1997) as support for a decision to
8 order the depositions and subsequent release of material witnesses. Some of these same courts
9 have also been asking for some reassurance that continued incarceration of witnesses will result
10 in a hardship for the witnesses. Counsel for this witness has provided the Court with a separate
11 declaration identifying the circumstances which are in place creating severe economic and
12 personal hardships for this witness and his family. Thus, this standard and often-applied
13 requirement has been met.

14 IV. 15 CONCLUSION

16 Under the clear meaning of U.S.C. Section 3144, legislative history and relevant case
17 law, the ordering of deposition and subsequent release of these material witnesses appears
18 mandatory.

19 With that in mind, the witnesses respectfully request this Court to grant video depositions
20 of their testimonies and then order their release.

21 DATED: June 24, 2008

/s/ Ray Keramati

22 R. Keramati, Esq.

23 Attorney for Material Witnesses

R. Keramati, SBN# 182425
Western Legal Group, APC.
110 West C. Street, Suite 1300
San Diego, California 92101
Telephone (619) 231-2529
Facsimile (619) 231-2528

Attorney for: ANTONIO SOLIS-MARTINEZ AND EFRAIN RAMOS-BAEZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE PETER C. LEWIS)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Katherine Frances STOVER

Defendant(s)

Criminal Case No. **08cr1913-L (PCL)**

DECLARATION OF RAY KERAMATI IN
SUPPORT OF MOTION REQUESTING
THE ORDERING OF THE VIDEO
DEPOSITIONS OF ANTONIO SOLIS-
MARTINEZ AND EFRAIN RAMOS-BAEZ

DATE: July 2, 2008

TIME: 10:30 a.m.

JUDGE: Honorable Peter C. Lewis

I, Ray Keramati, declare as follows:

1. I am an attorney duly licensed to practice before the courts of the State of California and I am counsel of record for Mr. Antonio Solis-Martinez and Efrain Ramos-Baez. If called as a witness herein, I could and would competently testify to the facts set forth herein.

2. Mr. Solis-Martinez and Mr. Ramos-Baez have been in custody since May 16, 2008.

3. Mr. Solis-Martinez and Mr. Ramos-Baez' incarceration have placed a great hardship on them.

4. Mr. Solis-Martinez and Mr. Ramos-Baez does not have sureties to post material witness appearance bonds for their release.

1 5. I am requesting that the court order a video deposition hearing to be held to secure the
2 testimonies of Mr. Solis-Martinez and Mr. Ramos-Baez as soon as practicable.

3 I declare under the penalty of perjury under the laws of the United States of America that
4 the foregoing is true and correct. Executed at San Diego, California on June 24, 2008.

5
6 DATED: June 24, 2008

/s/ Ray Keramati

R. Keramati, Esq.

Attorney for Material Witnesses

R. Keramati, SBN# 182425
Employment Mediation & Litigation Services, APC
110 West C. Street, Suite 1300
San Diego, California 92101
Telephone (619) 231-2529
Facsimile (619) 231-2528

Attorney for Material Witnesses

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE PETER C. LEWIS)

UNITED STATES OF AMERICA,)	Criminal Case No. 08cr1913-L (PCL)
Plaintiff,)	
vs.)	
Katherine Frances STOVER)	
Defendant(s))	CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the below Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

DATED: June 24, 2008

/s/ Ray Keramati
R. Keramati, Esq.

SERVICE LIST

United States v. Katherine Frances Stover

Case No. 08cr1913-L (PCL)

United States District Court, Southern District of California

- **U S Attorney CR**
Efile.dkt.gc2@usdoj.gov
- **Gerard Jeffrey Wasson**
gerard.wasson@sbcglobal.net

[Service via CM/ECF]